

1 Mildred K. O'Linn, Esq. (State Bar No. 159055)

2 MANNING & MARDER

3 KASS, ELLROD, RAMIREZ LLP

4 15th Floor at 801 Tower

5 801 South Figueroa Street

6 Los Angeles, CA 90017

7 Telephone: (213) 624-6900

8 Facsimile: (213) 624-6999

9 mko@mmker.com

10 Attorneys for Defendant, TASER INTERNATIONAL, INC.

11 Michael Brave, Esq. (Wisconsin State Bar No. 1012226)

12 National Litigation Counsel

13 TASER International, Inc.

14 17800 North 85th Street, 3rd Floor

15 Scottsdale, AZ 85255-6311

16 Telephone: (651) 248-2809

17 Facsimile: (480) 275-3291

18 brave@laaw.com

19 (Pro Hac Vice) Attorney for Defendant, TASER INTERNATIONAL, INC.

20 Holly Gibeaut, Esq. (Arizona State Bar No. 019786)

21 Litigation Counsel

22 TASER International, Inc.

23 17800 North 85th Street

24 Scottsdale, Arizona 85255-9603

25 Telephone: (480) 502-6265

26 Facsimile: (480) 905-2027

27 hgibeaut@taser.com

(Pro Hac Vice) Attorney for Defendant, TASER INTERNATIONAL, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

NOREEN SALINAS,

Plaintiffs,

vs.

CITY OF SAN JOSE, CHIEF ROBERT
DAVIS, TASER INTERNATIONAL, INC.
and DOES 1 to 10, inclusive,

Defendants.

) Case No.: C 08-02625 RS; 09-
04410 HRL

) [Richard Seeborg, United States
Magistrate Judge]

) **STIPULATION AND**
) ~~**PROPOSED**~~ **ORDER**
) **MODIFYING THE CASE**
) **MANAGEMENT SCHEDULE**

) **AS MODIFIED BY THE COURT**

TO THE HONORABLE COURT:

IT IS HEREBY STIPULATED by and between the parties to the above

1 entitled action, by and through their respective attorneys of record, and pursuant to
2 Federal Rules of Civil Procedure 16 and 40, as well as, to the extent applicable,
3 United States District Court, Northern District of California Local Rules 7-12 and
4 40-1, as follows:

5 **GOOD CAUSE STATEMENT.**

6 1. Pursuant to a prior stipulation of the parties, the Court consolidated two
7 related cases regarding the incident underlying the above entitled action: case no.
8 08-02625-RS (“Salinas-1”) and case no. 09-04410-HRL (“Salinas-2”). [See Related
9 Case Order, Dkt. Doc. 45, Nov. 17, 2009.]

10 2. Salinas-2 would have afforded the parties additional time for discovery
11 and pre-trial proceedings beyond the dates set forth in the Court’s scheduling order
12 for Salinas-1. [See Case Mgmt. Sched. Order, Dkt. Doc. 24, Dec. 4, 2008.]

13 3. Prior to the instant stipulation, the Court had modified the case
14 management scheduling order for Salinas-1 only once, extending the discovery cut-
15 off date from August 28, 2009 to September 28, 2009. [See Order, Dkt. Doc. 41,
16 Aug. 12, 2009.]

17 4. Notwithstanding the efforts of the parties, discovery was not completed
18 before the Salinas-1 extended discovery cut-off date. Specifically, the medical
19 examiner’s deposition was canceled twice: once by the witness and once by
20 plaintiffs. Additionally, on two occasions defendant TASER International, Inc.
21 (“TASER”) canceled plaintiffs’ depositions of TASER’s Persons Most
22 Knowledgeable (“PMK”). Both parties have subsequently encountered difficulty in
23 finding mutually agreeable deposition dates, in part due to the full trial calendars of
24 counsel for both parties.

25 5. Although plaintiffs and TASER have arranged for plaintiffs to take
26 TASER’s PMK depositions in early January, 2010, which depositions plaintiffs
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1 believe to be necessary, such discovery would occur after the Salinas-1 discovery
2 cut-off date unless the Court modified its operative scheduling order.

3 6. Counsel for the parties have substantial trial calendar conflicts which
4 also make the Salinas-1 case management schedule unworkable.

5 7. Specifically, trial counsel for defendant TASER, Michael Brave and
6 Holly Gibeaut, are scheduled for trial on the following dates: December 4, 2009
7 (10 days); January 11, 2010 (two weeks); February 1, 2010 or March 1, 2010
8 (10 days); March 22, 2010 (15 days); April 5, 2010 (10 days); May 11, 2010;
9 August 10, 2010; September 14, 2010, October 19, 2010; October 26, 2010.

10 8. Lead Trial Counsel for defendant TASER, Mildred O'Linn, is scheduled
11 for trial on December 4, 2009 (20 days); January 13, 2010 (10 days); March 8, 2010
12 (10 days); March 16, 2010 (10 days); March 22, 2010 (10-15 days); April 5, 2010
13 (10 days); June 7, 2010 (10 days); June 8, 2010 (10 days); August 10, 2010
14 (10 days); September 14, 2010 (15 days); October 5, 2010 (12 days); October 19,
15 2010 (10 days); October 26, 2010 (10 days). Ms. O'Linn will also be out of the
16 country from May 1, 2010 through May 16, 2010.

17 9. Trial counsel for defendant City of San Jose, Cliff Greenberg and
18 Michael Dodson are scheduled for trial on May 10, 2010, May 17, 2010, and July 26,
19 2010. Mr. Dodson will be on vacation from June 18 to July 4, 2010 and in late
20 August, 2010.

21 10. Trial counsel for plaintiffs, Dale K. Galipo, is scheduled for trial on
22 November 13, 2009; November 30, 2009; December 28, 2009; January 12, 2010;
23 January 26, 2010; February 9, 2010; February 10, 2010; February 23, 2010; March 2,
24 2010; March 8, 2010; March 9, 2010; March 16, 2010; April 5, 2010 (in this
25 case); April 19, 2010; April 21, 2010; May 3, 2010; May 4, 2010; May 10, 2010;
26 May 11, 2010; May 25, 2010; June 1, 2010; June 14, 2010, June 22, 2010; July 13,
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2010; August 3, 2010; September 13, 2010; September 28, 2010; November 2, 2010; and January 24, 2011.

11. Since, absent consolidation of the cases, the parties would likely have received pre-trial deadlines and a trial date for Salinas-2 that would have been later on the calendar than those for Salinas-2, and since important discovery cannot be completed under the operative case management schedule for Salinas-1, the parties hereby stipulate that Good Cause exists for the Court to modify the scheduling order for the consolidated Salinas-1 and Salinas-2 cases as follows hereafter.

STIPULATION RE CASE MANAGEMENT SCHEDULING ORDER.

12. In light of the fact that Salinas-1 and Salinas-2 have been effectively consolidated, and in light of the remaining discovery needs of the parties and the impossibility of addressing those needs under the Court's current operative case management scheduling order, and in light of the respective calendar conflicts and discovery interests of the parties, and in order to facilitate the effective litigation of this action, the parties hereby stipulate to and respectfully request that the Court issue a case management scheduling order along the following lines:

Fact/Non-Expert Discovery, and Related Motions Filing, Cut-Off:

April 1, 2010 (or a comparable date, in 2010, to be determined by the Court);

Plaintiffs' Expert Designations & Reports Deadline:

April 12, 2010 (or a comparable date, in 2010, to be determined by the Court, 10 or more days after the aforementioned Fact Discovery Cut-Off date);

Fact/Non-Expert Discovery Motions Hearing Deadline:

May 12, 2010 (or a comparable date, in 2010, to be determined by the Court, 35 or more days after the aforementioned Fact Discovery Cut-Off date);

Defendants' Expert Designations & Reports Deadline:

May 14, 2010 (or a comparable date, in 2010, to be determined by the Court, 30 or more days after Plaintiffs' Expert Designations-Reports are due);

Supplemental/Counter Expert Designations & Reports Deadline:

June 14, 2010 (or a comparable date, in 2010, to be determined by the Court, 30 or more days after Defendants' Expert Designations-Reports are due);

Expert Discovery and Related Motions Filing, Cut-Off:

July 30, 2010 (or a comparable date, in 2010, to be determined by the Court, 45 or more days after Supplemental/Counter Expert Designations-Reports are due);

Daubert Motions Filing Cut-Off:

August 30, 2010 (or a comparable date, to be determined by the Court, 30 or more days after the Expert Discovery Cut-Off);

Daubert Motions & Expert Discovery Motions Hearing Deadline:

October 6, 2010 (or a comparable date, to be determined by the Court, 35 or more days after the *Daubert* Motions Filing Cut-Off);

Motions for Summary Judgment-Adjudication Filing Cut-Off:

November 12, 2010 (or a comparable date, to be determined by the Court, 30 or more days after the *Daubert* Motions Hearing Deadline);

Motions for Summary Judgment-Adjudication Hearing Deadline:

December 29, 2010 (or a comparable date, to be determined by the Court, 35 or more days after the Motions for Summary Judgment-Adjudication Filing Cut-Off);

Pre-Trial Statements & Documents, & Motions *in Limine*, Filing Deadline:

February 4, 2011 (or a comparable date, to be determined by the Court, 30 or more days after the Motions for Summary Judgment-Adjudication Hearing Deadline);

Pre-Trial Conference:

February 16, 2011 at 2:30 p.m. (or a comparable date and time, to be determined by the Court, 10 or more days after the Pre-Trial Statements &

Documents Filing Deadline);

TRIAL:

February 28, 2011 at 8:30 a.m. (or a comparable date and time, to be determined by the Court, 10 or more days after the Pre-Trial Conference).

13. It is further agreed that this Stipulation may be signed in counterpart and that a facsimile or electronic signature will be as valid as an original signature.

IT IS SO STIPULATED.

Dated: December 10, 2009

**MANNING & MARDER
KASS, ELLROD, RAMIREZ LLP**

By: /s/ Mildred K. O'Linn
Mildred K. O'Linn, Esq.
Attorneys for Defendant,
TASER INTERNATIONAL, INC.

Dated: December 10, 2009

LAW OFFICES OF DALE K. GALIPO

By: /s/ Dale K. Galipo
Dale K. Galipo, Esq.
Attorneys for Plaintiffs,
NOREEN SALINAS

Dated: December 10, 2009

OFFICE OF THE CITY ATTORNEY

By: /s/ Michael Dodson, Sr.
Michael Dodson, Sr., Esq.
Attorneys for Defendants,
CITY OF SAN JOSE and ROBERT DAVIS

ORDER

PURSUANT TO THE STIPULATION of the parties, Good Cause appearing therefor, and in furtherance of the interests of justice, IT IS SO ORDERED as follows:

The operative case management scheduling order of this Court is hereby modified and re-set as follows:

Fact/Non-Expert Discovery, and Related Motions Filing, Cut-Off:

April 1, 2010

Plaintiffs' Expert Designations & Reports Deadline:

April 12, 2010

Fact/Non-Expert Discovery Motions Hearing Deadline:

May 12, 2010

Defendants' Expert Designations & Reports Deadline:

May 14, 2010

Supplemental/Counter Expert Designations & Reports Deadline:

June 14, 2010

Expert Discovery, and Related Motions Filing, Cut-Off:

July 30, 2010

Daubert Motions Filing Cut-Off:

August 30, 2010

Daubert Motions & Expert Discovery Motions Hearing Deadline:

October 6, 2010

Motions for Summary Judgment-Adjudication Filing Cut-Off:

November 12, 2010

Motions for Summary Judgment-Adjudication Hearing Deadline:

December 29, 2010

1 Pre-Trial Statements & Documents, & Motions *in Limine*, Filing Deadline:

2 February 4, 2011

3 Pre-Trial Conference:

4 February 16, 2011 at 2:30 p.m.

5 TRIAL:

6 February 28, 2011 at 8:30 a.m.

7 **IT IS SO ORDERED. ***

8
9 Dated: December 14, 2009



10 **UNITED STATES MAGISTRATE JUDGE**
11 RICHARD SEEBORG

12 * The parties are advised that pursuant to their request that the Court decide the motion to dismiss
13 in C 09-4410 RS prior to the filing of any consolidated complaint, no order consolidating the two
14 actions has yet been entered. Additionally, if the motion to dismiss is to be decided, it must be
15 noticed for hearing.
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